

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

JAMES ALLEN GREEN and wife
VICTORIA GREEN,

Plaintiffs,

vs.

WITRON INTEGRATED LOGISTICS
CORPORATION,
TGW-ERMANCO, INC., TGW, INC.,
TGW TRANSPORTGERATE GmbH & Co., KG,
SIEMENS ENERGY & AUTOMATION,
INC., and SIEMENS ENERGY, INC.,

Defendants.

* * * * Case No.: 1:09-CV-00312

* * * * COLLIER / LEE

* * * * JURY DEMAND

ORDER

This matter came before the Court on the parties' Joint Motion to Compel. (Court File No. 53). Following arguments of counsel and instruction from the Court, the parties and Peyton's Southeastern, Inc; Kroger Limited Partnership I, LLC; Kroger Group, Inc.; KRGP, Inc.; and The Kroger Company hereinafter ("Kroger") enter the following Agreed Order to the parties' Motion. It is therefore:

ORDERED, ADJUGED AND DECREED that:

1. Kroger will produce documents responsive to Request Nos. 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40 (Court File No. 53-1), subject to Kroger's right to claim privilege or protection under Rule 45(d)(2) and its right to seek its costs of production under Rule 45(c).

2. Kroger will produce documents responsive to Request Nos. 1, 3, 5, 6, and 28 as modified herein, subject to Kroger's right to claim privilege or protection under Rule 45(d)(2) and its right to seek its costs of production under Rule 45(c):

Request No. 1 – All documents pertaining to the investigation of the accident; the equipment within the OCB crane area; design; modification; and training; and the causes of the accident suffered by James Allen Green on 11/11/2008.

Request No. 3 – Produce the following documents regarding the design, construction and modification of the OCB crane area of Building C of the Peyton's Southeastern Distribution Center in Cleveland, Tennessee: contracts, design plans, and modifications, change orders, correspondence, invoices, bills.

Request No. 5 – Johnny Duggan's entire employment file.

Request No. 6 – Dewey Carson's entire employment file.

Request No. 28(a) – Documents reflecting the corporate relationship between Peyton's Southeastern, Inc., Kroger Limited Partnership I, Kroger Group, Inc., KRGP, Inc. and the Kroger Company, or any other entity within the corporate hierarchy of the company referred to as Kroger, the national grocery store chain.

Request No. 28(b) – Documents reflecting the ownership of Peyton's Southeastern, Inc. from 2002 until present.

Request No. 28(c) – Documents reflecting ownership, change of ownership, transfer of ownership, modification of ownership of the system from 2002 to present. For purposes of this request, the "system" is the automated distribution facility contemplated by the contract between Witron Integrated Logistics Corp. and Kroger Limited Partnership I entered on September 25, 2002.

3. Kroger does not have to respond to Request No. 29.¹

¹ The parties also note that Request No. 19 from Court File No. 53-1 should also be stricken. Siemens Energy and Automation was dismissed from this case. (Court File No. 51).

4. Kroger will produce the documents that are readily available and related privilege log pursuant to Rule 45(d)(2) by October 12, 2012. Production of all documents set forth in Court File No. 53-1 and modified by this Order will be completed by November 12, 2012. All documents produced by Kroger shall be considered and treated by the parties as "Confidential Information" under the Agreed Protective Order filed February 3, 2012 (Court File No. 42). Provided, however, that Kroger is not required to specifically designate any documents as "Confidential" or take any other action in accordance with paragraph A. 1. of the Agreed Protective Order in order for any document to be treated as "Confidential Information".

5. Kroger will submit an itemized list of its costs of production, including attorney's fees, to the parties by December 12, 2012. The parties and counsel for Kroger must meet and confer to attempt to resolve the fee reimbursement issue by December 21, 2012. If the parties are unable to reach an agreement regarding the reimbursement of Kroger's costs of production, including attorney's fees, the matter must be brought by motion no later than January 4, 2013.

ENTER this _____ day of _____, 2012,

s/ Susan K. Lee

SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE

APPROVED FOR ENTRY:

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